IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION

FIRST APPEAL NO.925 OF 1997

United India Insurance Co.Ltd.,
Policy No.50300/31/40/010168/94,
Valid upto 14.2.94 to 13.2.95. Appellant
(org.Insurer)

vs.

1. Iqubal Ahemad Shaikh, aged
about 26 years (father of the
deceased) residing at Kamani,
Sanjan Nagar, Near Chantara Hotel,
Kurla (W), Mumbai 400 070.

2. Manubhai Jerabai Sisodia
c/o.Shri Sisodia Tragels
Madupure, Char Raste, Phulpura
Naka, Ahemdabad. Respondents
(R.No.1-org.applicant &
R.No.2-org.Opp. party)

Mr.S.S.Vidyarthi for the appellant.

CORAM : ANOOP V. MOHTA,J.

DATED : 18th July, 2007

ORAL JUDGMENT:

The appellant-United India Insurance Co.Ltd. (Insurer) has challenged the grant of interim award of Rs.50,000/- under Section 140 of the Motor Vehicles Act, 1988. The accident took place on 12.11.1994. At that time as per the then existing provision, the "no fault liability" amount was Rs.25,000/- as contemplated under Section 140 of the Motor Vehicles Act. By amendment dated 14th November, 1994, the said amount has been replaced by Rs.50,000/-.

2. The deceased succumbed to the said injury on 18.12.1994. Therefore the contention that the learned Tribunal ought not to have awarded Rs.50,000/- as the entitlement of interim award in such circumstances should have been the date of accident and not the date of death. The learned Judge, after considering the rival contentions as raised by the parties, came to a conclusion that for the original claimants entitlement of any award or compensation comes after the death and not before that. Even otherwise, considering the scheme and the provisions of the Act and specially the principle of "no fault liability" as contemplated under the said provision, there was no occasion for the claimants to make such application being heirs of the deceased. Therefore, without expressing anything on the merits of the matter, in the facts and circumstances of the case, I am of the view that the claimants were entitled to move this application for interim award only after the death of the deceased and, therefore, as it was moved after the death the Tribunal has granted the interim award based on the existing provision after 14.11.1994. There is no reason to interfere with the said interim award.

3. In so far as the issue about the maintainability of the appeal is concerned, the issue is settled and such appeal is maintainable.

4. With regard to the Division Bench judgement as cited by the learned counsel for the plaintiff in **Prakash C. Khatri & anr. vs. Suresh P. Makhija & anr., 1992 ACJ 369,** that was a case of accident and death on the spot. Therefore, on the date of accident itself the provision as available on the date of accident and death, was relevant. Therefore, the facts and circumstances are totally distinct and distinguishable. Same is the case in the case of **Padma Srinivasan v. Premier Insurance Company Ltd., 1982 ACJ 191,** wherein the Apex Court has observed that for determining the extent of liability for insurance company the material date is the date of accrual of cause of action when its liability arises i.e. the date of accident. In that case also, on the date of accident itself, the appellant's husband was dead. Therefore, the cause of action arose on the date of the accident itself for claiming such compensation for the heirs of the deceased. In the present case, the accident did occur prior to the amendment but the deceased succumbed to the injury after the death i.e. 14.11.1994. In this case also the facts and circumstances are distinct and distinguishable.

5. The facet of adjusting the interim amount of Rs.50,000/- is always open to the Tribunal to consider.

It be adjusted if not considered already.

6. The learned counsel for the appellant states that at the time of registering this appeal, the appellant has deposited Rs.25,000/-. In view of the dismissal of the present appeal and there is no opposition, the appellant is entitled to refund of this amount deposited in this court.

6. Resultantly, the appeal is dismissed with above observations. No costs.

7. In the result, C.A.No.5795/1997 is also dismissed in view of the dismissal of first appeal. The stay also stands vacated.

[ANOOP V. MOHTA,J.]